

6/10/04

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

v. : CRIMINAL NO. 01-CR-260
(Judge Kane)

DERRICK RUSSELL FELDER, :
Defendant

FILED
HARRISBURG, PA

JUN 10 2004

TRANSCRIPT OF PROCEEDINGS
Per MARY E. DIANDREA, CLERK
Deputy Clerk

SENTENCING

Before: Hon. Yvette Kane, Judge

Date: May 14, 2003

Place: Courtroom No. 4
Federal Building
Harrisburg, Pa.

COUNSEL PRESENT:

CHRISTY FAWCETT, Assistant U.S. Attorney

For - Government

MATTHEW R. GOVER, Esquire

For - Defendant

Monica L. Zamiska, RPR
Official Court Reporter

1 MS. FAWCETT: Your Honor, this is No. 1:01-CR-260,
2 the United States of America v. Derrick Russell Felder. The
3 defendant pled guilty on July 24, 2002 to Count 1 of an
4 indictment, and he's here today with Mr. Gover to be
5 sentenced.

6 THE COURT: Mr. Gover, do you have the report?

7 MR. GOVER: Yes, Your Honor.

8 THE COURT: I see that there are some objections,
9 but we begin with an offense level of 28 and a criminal
10 history category III, making for an imprisonment range of 97
11 to 121 months. Let me hear your objections.

12 MR. GOVER: Your Honor, it's argument, and it
13 concerns the acceptance as well as the suggestion in the
14 presentence report for an upward departure. I'm prepared to
15 proceed in the way I did earlier this morning.

16 THE COURT: Okay.

17 MR. GOVER: Initially, Your Honor, we're well aware
18 of the law of the third circuit in terms of Ceccarani and
19 also the case you were involved in, the Williams, Viggiano
20 case, in terms of post indictment conduct. And that having
21 been said, Your Honor, I know it's a balancing test, even
22 then that it's not mandatory that you impose or -- it's not
23 mandatory that you follow this recommendation, and I hope
24 that you wouldn't.

25 Clearly we have a tough road to hoe here, but once

1 he was caught, I think many of the other considerations that
2 are found in 3(e)1.1 are there, that he did timely indicate
3 his intention to enter a plea and that further he met on at
4 least two occasions, possibly three, with representatives of
5 the ATF out of the eastern district. There was also an
6 Assistant U.S. Attorney who came in and truthfully laid out
7 his role in that larger eastern district scheme to which the
8 Gettysburg situation is part of to which he still faces
9 exposure on in the eastern district.

10 The -- and, lastly, you know, he has acknowledged
11 from the outset to me, to the investigators and also to this
12 Court his culpability as it concerns the Chambersburg
13 incident. I would hope when you weigh those issues you would
14 give him the benefit of acceptance and sentence him to an
15 appropriate sentence within that range.

16 Lastly, on the departure issue, if you don't find
17 acceptance, the top end of the range here is fairly
18 significant, and it's not like this is a small amount of
19 cocaine with a gun where it underrepresents his role.
20 Clearly the level of cocaine, the prior criminal history I
21 think places this defendant in a situation where a departure
22 beyond 120 months is -- would be in all candor I believe
23 unreasonable. And we would hope that you would sentence this
24 defendant consistent with the guideline range and consistent
25 more importantly with acceptance as he does indeed face the

1 eastern district problem, and he recognizes that.

2 Derrick has also asked that you consider
3 designating Fort Dix as a place of confinement.

4 He had hoped that his mother and father were here.
5 I thought I saw them earlier. I looked downstairs, and they
6 had intended to be here, but they have been very interested
7 throughout the course of this case in terms of Derrick and
8 what's occurred. He knows he faces a very long stint in
9 jail, much longer than the last case, and I have always found
10 it an odd situation because he's one of the most articulate
11 people I have represented, and he's clearly intelligent, and
12 I hope that the Court will give him some leniency as you
13 consider your sentencing decision.

14 Derrick, excuse me, this is the time for you to
15 address the judge. Is there anything that you wish to say?

16 THE DEFENDANT: Yes. First of all, good morning.
17 Um, I just would like to apologize to the Court on behalf of
18 my actions and putting my family through this matter, and
19 right now I'm 22 years old, and I don't want to spend the
20 remainder of a lot of years in prison, so I'm looking forward
21 to getting this behind me. And I would just hope for the
22 mercy of the Court, to show some leniency on my behalf. I
23 have plenty of time in prison to think about what I have
24 done, and I have accepted responsibility on any and all
25 matters that I have been involved with.

1 My intentions out there weren't to get in any
2 trouble. As a matter of fact, I was pursuing further college
3 and pursuing work, but I got into some foolish activity and
4 made wrong decisions, and I'm owning up to the decisions, and
5 I'm looking for your leniency, and I hope that you will take
6 consideration in that, Your Honor, this morning.

7 THE COURT: Thank you. Miss Fawcett.

8 MS. FAWCETT: Your Honor, with respect to the issue
9 of acceptance of responsibility, as the Court knows, the
10 third circuit upheld denial of acceptance of responsibility
11 for defendants who offend post charge, and that factor for
12 denying acceptance of responsibility has also been used by
13 the middle district courts on a number of occasions. This
14 defendant reoffended in a big way. This wasn't a minor
15 infraction that he committed of being charged in this
16 offense, and after getting bail in this offense, which was
17 also a significant break that he had, he purchased nine
18 firearms using a false Pennsylvania driver's license. He was
19 transporting those firearms from Philadelphia to Gettysburg.
20 He indicated to the Court that he was involved in some
21 foolishness. I would suggest to the Court that this activity
22 is certainly much more than foolishness, it's dangerous
23 criminal activity.

24 He also had a break both in the initial charging
25 decision because he could have been charged with a

1 substantially greater quantity of crack cocaine than 5 grams
2 of crack cocaine, he could have been charged with -- well,
3 there were additional offenses that may have applied, and
4 certainly an additional quantity of crack cocaine could have
5 applied. And in addition he was then given a further break
6 in his guilty plea because he only pled guilty to one of the
7 offenses he was charged with.

8 This case is not my case, it's Mr. Behe's case. I
9 did discuss with him before I came to court today both
10 acceptance of responsibility, and certainly the government
11 feels very strongly that he should not get credit for
12 acceptance of responsibility. I also discussed with him the
13 issue of upward departure. That is something that Mr. Behe
14 does not feel extremely strongly about. I would suggest to
15 the Court, however, that under the circumstances of this
16 case, even if the Court does not grant an upward departure,
17 that the sentence at the bottom of the guideline range might
18 be inappropriate.

19 THE COURT: I'm sorry, the bottom of the range
20 might not be appropriate?

21 MS. FAWCETT: Might not be appropriate given the
22 circumstances.

23 THE COURT: Mr. Felder, you present a tough case.

24 THE DEFENDANT: Yes.

25 THE COURT: I will tell you why, and you may

1 already know why. The criminal behavior here is off the
2 charts. I mean you have a terrible criminal record. The
3 offense that you stand before the Court for now on is a
4 serious one, and then to be out of jail awaiting proceedings
5 and to go and reoffend in an horrific way, crimes involving
6 guns are -- is as serious as bank robberies and murders
7 because when you put guns out on the street for other
8 criminals to take and use, they hurt innocent people, and
9 sometimes they hurt law enforcement officers. They want guns
10 because they can't legally get them, only nice people can
11 legally get guns. So I view the new offense in the most
12 serious way.

13 I think the probation officer is right, there is a
14 reason to suggest that the criminal conduct and the way it's
15 calculated by the guidelines really does underestimate the
16 potential that you have to reoffend. Everything about you
17 says you could be headed to a lifetime of crime, more and
18 more of these offenses against the community. I don't see
19 how anybody 22 years old could have amassed the kind of
20 record that you already have, but at the same time you do
21 present a hard case because you are 22 years old, and I look
22 at what you have going for you.

23 I wish you could sit in this courtroom and see some
24 of the people who come through. I can tell you that I can
25 look at them when they walk in the door and say they didn't

1 have a chance to do anything else, they come from poverty,
2 they had no family or family who threw them away and didn't
3 care about them. But here you are a nice looking man,
4 articulate, good family, every reason to think that you could
5 be a good citizen and a contributing member of society, and I
6 can't for the life of me read this report and figure out why
7 you would throw all that away.

8 But there is something that says to me that there
9 is a hope here because you have those things going for you.
10 You still have this matter in the eastern district that you
11 have to face, and I don't know what the judge is going to do
12 there, but I think he or she will do the right thing, and
13 you're going to start out with already a healthy sentence, so
14 to me to put you in the higher range doesn't really
15 accomplish very much. I'd like to think that you really have
16 learned a lesson, that you are going to leave here, do your
17 time and be one of those few people who come out of prison
18 and really turn your life around. You have everything going
19 for you to be able to do it. You still have family willing
20 to stand by you, they're not here today, because your mom was
21 going to be sitting in the front row crying and wondering
22 what went wrong. You probably don't want to see that, none
23 of the rest of us want to see it either. So I'm going to
24 sentence you at the higher end of the guideline range without
25 aggravating it further and hope for the best. I hope you

1 make it.

2 THE DEFENDANT: Thank you.

3 THE COURT: Pursuant to the Sentencing Reform Act
4 of 1984 it's the judgment of the Court on Count 1 of the
5 indictment that the defendant Derrick Russell Felder is
6 hereby committed to the custody of the Bureau of Prisons to
7 be imprisoned for a term of 120 months.

8 The Court finds that the defendant has the ability
9 to pay a fine below the guideline range. Accordingly it's
10 further ordered that the defendant pay to the United States
11 the sum of \$1,600, consisting of a fine of \$1,500 and a
12 special assessment of \$100. The fine and assessment are due
13 immediately, shall be paid through the Clerk of Court and are
14 payable during the period of incarceration with any balance
15 to be paid within 4 years of his release from custody.

16 On release from imprisonment the defendant shall be
17 placed on supervised release for a term of 4 years.

18 Within 72 hours of release from custody of the
19 Bureau of Prisons the defendant shall report in person to the
20 probation office in the district to which he's released.

21 While on supervised release the defendant shall
22 comply with the standard conditions that have been adopted by
23 the Court and with the following special conditions: The
24 defendant shall pay any balance of the fine imposed by this
25 judgment that remains unpaid at the commencement of the term

1 of supervised release in minimum monthly installments of \$50.
2 As a condition of supervision the defendant shall submit to
3 one drug test within 15 days of release from custody and at
4 least two periodic drug tests thereafter.

5 Mr. Felder, you do have a right to appeal your
6 conviction if you believe your guilty plea was somehow
7 unlawful or involuntary or that there are some other
8 fundamental defects in the proceedings that you did not waive
9 by entering a guilty plea.

10 You also have a statutory right to appeal your
11 sentence under certain circumstances, particularly if you
12 think that the sentence I now imposed is contrary to law.

13 With very few exceptions any notice of appeal would
14 have to be filed within 10 days after imposition of sentence.

15 If you're not able to pay the costs of an appeal,
16 you could request leave to appeal in forma pauperis and
17 request that the Clerk of Court file a notice of appeal on
18 your behalf.

19 Miss Fawcett, do you object to the Court
20 recommending a designation of Fort Dix?

21 MS. FAWCETT: I do not, Your Honor.

22 THE COURT: I will make that part of my sentencing
23 order.

24 Is there anything else for the record?

25 MS. FAWCETT: Your Honor, we will move for

1 dismissal of Counts 2 and 3 of the indictment.

2 THE COURT: Motion granted.

3 Anything else?

4 MR. GOVER: No, Your Honor.

5 THE COURT: All right, we'll be in recess.

6 MS. FAWCETT: Thank you, Your Honor.

7 (The proceedings concluded.)

8
9 I hereby certify that the proceedings and evidence
10 of the court are contained fully and accurately in the notes
11 taken by me on the sentencing of the within cause and that
12 this is a correct transcript of the same.

13 Monica L. Zamiska

14 Monica L. Zamiska, RPR

15 Official Court Reporter
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